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SUPREME COURT OF THE STATE OF NEW YORK

FOR THE COUNTY OF NASSAU

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U.S. DISTRICT COURT E.D.N.Y
★ AUG 24 2007 ★
LONG ISLAND OFFICE

GERARD DEPASCALE, LIAM NEVILLE, AND JOANNE DEPASCALE

Plaintiffs,

vs.

SYLVANIA ELECTRONIC PRODUCTS, INC; GENERAL TELEPHONE AND ELECTRIC, INC.; VERIZON COMMUNICATIONS, INC; and DOES 1-1000,

Defendants.

COMPLAINT

Index No.:

Plaintiffs, Gerard DePascale, Liam Neville, and Joanne DePascale, by their attorneys, The Marasco Law Firm, complain of the Defendants and allege as follows:

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INTRODUCTION

1. This is an action undertaken by Plaintiffs Gerard DePascale and Liam Neville on their own behalf as persons exposed to toxic chemical and radioactive substances used on the property owned and at times operated by Defendants Sylvania Electronic Products, Inc. ("Sylvania"), General Telephone and Electronics, Inc. ("GTE") and Verizon Communications, Inc. ("Verizon") and Doe Defendants 1 through 1000 (collectively, "Defendants"). Plaintiff Joanne DePascale undertakes this action as the spouse of Plaintiff Gerard DePascale. When Plaintiffs Gerard DePascale and Liam Neville were exposed to the toxic chemical and radioactive substances on this property, it was operated by Magazine Distributors, Inc.

2. Plaintiff Gerard DePascale is a natural person and resident of the County of Suffolk, State of New York who, at all times mentioned, was an employee of Magazine Distributors for a period of time beginning in or about 1993 and ending in 2003. Plaintiff Gerard DePascale worked in a number of capacities for Magazine Distributors, including, but not limited to, driver and warehouseman. At all times mentioned, Plaintiff Gerard DePascale was married to and cohabited with Plaintiff Joanne DePascale.

3. Plaintiff Liam Neville is a natural person and a resident of the County of Queens, State of New York who, at all times mentioned, was an employee of Magazine Distributors for a period of time beginning in or about 1990 and ending in 2002. Plaintiff Liam Neville worked in a number of capacities for Magazine Distributors, including, but not limited to, night foreman and delivery foreman.

4. Defendant Sylvania is, and at all relevant times was, a Delaware corporation licensed to do business in New York, and was the owner and/or

operator from 1952 to 1966 of the nuclear fuel rod production facility at the Hicksville property.

5. Defendant GTE, at all relevant times, was a New York corporation licensed to do business in New York, and was the owner or operator of the Hicksville property from in or about 1966 until the present. Plaintiffs are informed and believe that Defendant GTE merged with Defendant Verizon in or about 2000.

6. Defendant Verizon is, and at all relevant times was, a Delaware corporation licensed to do business in New York. Plaintiffs are informed and believe and thereon allege that Defendant Verizon was the owner or operator of the Hicksville property from in or about 2000 to the present.

7. Plaintiffs are informed and believe and thereon allege that from in or about 1952 to in or about 1966 Defendant Sylvania operated a facility that produced, handled, and stored nuclear fuel rods at 100 Cantiague Rock Road, Hicksville, New York ("the Hicksville property"). During its production, handling, and storage of these nuclear fuel rods, Defendant Sylvania used radioactive uranium and thorium as well as industrial solvents. These are all toxic substances when used independently or in combination with other substances, and they remain toxic for a long period of time.

8. Plaintiffs are informed and believe and thereon allege that during the manufacturing process of the nuclear fuel rods, industrial solvents and radioactive substances were discharged into the ground at the Hicksville property. Industrial solvents and radioactive substances remained in toxic form at the Hicksville property until at least 2003.

9. Plaintiffs are informed and believe and thereon allege that beginning in or about 1966, Defendant GTE owned and operated the Hicksville property, and also leased it to other companies, including Magazine Distributors.

10. Plaintiffs are informed and believe and thereon allege that after its merger with Defendant GTE, Defendant Verizon leased the Hicksville property to Magazine Distributors for use as a warehouse.

11. Plaintiffs Gerard DePascale and Liam Neville primarily worked at the Magazine Distributors warehouse at the Hicksville property. Various magazine publishers delivered their magazines to the warehouse, leaving them in bundles on the cement floor. Magazine Distributors employees sorted the magazines for delivery to retail locations. In the course of Magazine Distributors' employment of Plaintiffs Gerard DePascale and Liam Neville, they were frequently and repeatedly required to handle the bundles of magazines and load them into delivery truck. Plaintiffs Gerard DePascale and Liam Neville often handled the bundles of magazines with their bare hands.

12. Plaintiff Gerard DePascale worked exclusively in the Magazine Distributors warehouse for a period of approximately one month while awaiting his commercial driver's license, handling and sorting magazines. Plaintiff Gerard DePascale then worked as a driver for Magazine Distributors. While working as a driver, Plaintiff Gerard DePascale parked and stored his delivery truck overnight, every day for several years, in areas of the Hicksville property with exposed, contaminated dirt. These areas were more toxic than the areas paved with concrete or asphalt. During this period, Plaintiff Gerard DePascale also parked his personal car in an area with exposed, contaminated dirt.

13. A water drain at the Hicksville property often overflowed when it rained, leaving large puddles that exposed contaminants to Plaintiffs Gerard DePascale and Liam Neville and other employees, who had to walk past the drain to get to the delivery trucks. These toxic puddles often remained for several days. After particularly heavy rainfall, the puddles sometimes grew so large that

Magazine Distributors installed temporary pumps to pump the water into the adjacent park.

14. Plaintiff Gerard DePascale was diagnosed with extraskeletal mixoid chondrosarcoma, an extremely rare form of cancer, or about January 15, 2006. During his treatment at Stony Brook University Medical Center and St. Catherine's Hospital, Plaintiff Gerard DePascale's doctors determined the cancer was caused by exposure to radiation and toxic chemicals.

15. Plaintiff Liam Neville was diagnosed with membranous nephropathy, a kidney disease, in August 2004. Plaintiff Neville is currently unable to work. Within the next two years, Plaintiff Liam Neville's kidneys will stop functioning and he will require regular dialysis and eventually a kidney transplant. During the course of his treatment, Plaintiff Liam Neville's doctors determined his kidney disease was caused by exposure to radiation and toxic chemicals. Plaintiff Liam Neville also suffers from sleep apnea.

16. Plaintiffs are informed and believe and thereon allege that as a result of Defendants' activities and failure to warn of or prevent the use of toxic chemicals and radioactive substances, Plaintiffs Gerard DePascale and Liam Neville have suffered, and will continue to suffer, serious damage to their health. Plaintiffs Gerard DePascale and Liam Neville may also suffer further health consequences in the future, requiring medical monitoring and treatment. Their medical conditions have required, and will continue to require, Plaintiffs Gerard DePascale and Liam Neville to expend large sums of money to obtain proper medical care. Their medical conditions have also caused, and will continue to cause, pain and suffering to Plaintiffs Gerard DePascale and Liam Neville.

17. When, in this complaint, reference is made to any act of a Defendant, this shall be deemed to mean that the officers, directors, agents,

employees, or representatives of that Defendant committed or authorized such acts, or failed to adequately supervise or properly control or direct their employees while engaged in the management, direction, operation or control of the affairs of that Defendant and did so while acting within the scope of their employment or agency.

18. Plaintiffs are ignorant of the true names and capacities of defendants sued herein as DOES 1 through 1,000, inclusive, and therefore sue DOES 1 through 1,000, inclusive, and each of them, by such fictitious names. Plaintiffs will later amend this Complaint to allege their true names and capacities, along with appropriate charging allegations, when these have been ascertained. Plaintiffs are informed and believe and thereon allege that each of the fictitious DOES 1 through 1,000, inclusive, is responsible, in some actionable manner, for the occurrences herein alleged, either through the conduct of the Defendants' agents, servants or employees, or in some other manner, and Plaintiffs' injuries as herein alleged were proximately caused by the acts of DOES 1 through 1,000, inclusive, and each of them.

JURISDICTION AND VENUE

19. Plaintiffs reallege and incorporate by reference as if fully set forth herein Paragraphs 1 through 18, inclusive.

20. This Court has jurisdiction over all causes of action asserted herein pursuant to the Constitution of the State of New York, Article VI, § 7, because this case is not given by statute to any other trial courts.

21. This Court has jurisdiction over all Defendants because they are either New York corporations, residents of New York, corporations or individuals authorized to do business in New York or registered with the New York Secretary

of State, do sufficient business with sufficient minimum contacts in New York, or otherwise intentionally avail themselves of the New York market through their business dealings in New York courts consistent with traditional notions of fair play and substantial justice, or own, use or possess real property situated within the State of New York.

22. Venue is proper in this Court because the Defendants are located in or do substantial business in Nassau County and this county has been designated by Plaintiffs. This Court is the proper venue under New York Civil Practice Laws and Rules §§ 503 and 509.

FIRST CAUSE OF ACTION: STRICT LIABILITY - ABNORMALLY DANGEROUS ACTIVITYAGAINST ALL DEFENDANTS SYLVANIA, GTE, VERIZON AND DOES 1 TO 1,000

23. Plaintiffs reallege and incorporate by reference Paragraphs 1 through 22 of this Complaint.

24. Plaintiffs are informed and believe and thereon allege that from 1952 to 1966 Defendant Sylvania operated a facility at the Hicksville property that produced, handled, and stored nuclear fuel rods. Defendant Sylvania used radioactive uranium and thorium as well as various industrial solvents. These are all toxic substances when used independently or in combination with other substances, and they remain toxic for a long period of time.

25. Plaintiffs are informed and believe and thereon allege that during the manufacturing process of the nuclear fuel rods, industrial solvents and radioactive substances were discharged into the ground at the Hicksville property. Industrial solvents and radioactive substances remained in toxic form at the site at the Hicksville property until at least 2003.

26. Plaintiffs are informed and believe and thereon allege that beginning in or about 1966, Defendant GTE owned and operated the Hicksville property and leased it to other companies, including Magazine Distributors, the employer of Plaintiffs Gerard DePascale and Liam Neville.

27. Plaintiffs are informed and believe and thereon allege that, as a result of a merger in or about 2000 between Defendant GTE and Defendant Verizon, the Hicksville property is now owned by Defendant Verizon. Defendant Verizon leased the Hicksville property to other companies, including Magazine Distributors.

28. Plaintiffs are informed and believe and thereon allege that Defendant Sylvania's use of toxic and radioactive materials at the Hicksville property and the leasing of the Hicksville property by Defendants GTE and Verizon posed a high degree of risk of harm to other persons and their property, and that these activities severely harmed Plaintiffs Gerard DePascale and Liam Neville.

29. Plaintiffs are informed and believe and thereon allege that Defendant Sylvania's use of toxic and radioactive materials at the Hicksville property and the leasing of the Hicksville property by Defendants GTE and Verizon posed a likelihood of great harm to other persons and their property, including Plaintiffs Gerard DePascale and Liam Neville, and that these activities severely harmed Plaintiffs.

30. Plaintiffs are informed and believe and thereon allege that Defendant Sylvania's use of toxic and radioactive materials at the Hicksville property was an uncommon activity, even during the height of the Cold War, when these activities took place. Defendants GTE and Verizon also engaged in uncommon activity in leasing the Hicksville property, as leased property is not commonly understood to be contaminated by radioactive substances and industrial solvents.

31. Plaintiffs are informed and believe and thereon allege that Defendant Sylvania's use of toxic and radioactive materials at the Hicksville property was inappropriate in that location. Even in the 1950s the site bordered the quickly-growing suburbs of New York City, and at present it is surrounded by suburban development, including houses and a public park. The leasing of the Hicksville property by Defendants GTE and Verizon to local businesses was an inappropriate use of the land in its unremediated, toxic state.

32. Plaintiffs are informed and believe and thereon allege that the production of radioactive substances at the Hicksville property by Defendant Sylvania and the leasing of the Hicksville property by Defendants GTE and Verizon are so dangerous as to greatly outweigh any value such activities provide to the community.

33. Plaintiffs are informed and believe and thereon allege that sometime prior to 1991 and continuing until in or about June, 2003, Magazine Distributors leased and operated a warehouse at the Hicksville property. The employment of Plaintiffs Gerard DePascale and Liam Neville with Magazine Distributors required that they work at the Hicksville property almost daily. As a result, Plaintiffs Gerard DePascale and Liam Neville were continually exposed, during the regular course of their work, to the industrial solvents and radioactive substances contaminating the Hicksville property.

34. Plaintiffs are informed and believe and thereon allege that the severe harm to the health of Plaintiffs Gerard DePascale and Liam Neville, suffered as result of their exposure to industrial solvents and radioactive substances, was exactly the kind of harm that would be anticipated as a result of Defendant Sylvania's use of toxic and radioactive materials at the Hicksville property and the leasing of the Hicksville property by Defendants GTE and Verizon.

35. Plaintiffs are informed and believe and thereon allege that as a result of the ultrahazardous and abnormally dangerous conditions on the Hicksville property, Plaintiffs Gerard DePascale and Liam Neville have sustained severe injury in amount subject to proof at trial. Plaintiffs ask leave of the Court to amend this Complaint to set forth the exact amount of damages when they have been ascertained or proven.

SECOND CAUSE OF ACTION: PREMISES LIABILITY AGAINST DEFENDANTS GTE, VERIZON, AND DOES 1 TO 1,000

36. Plaintiffs reallege and incorporate by reference Paragraphs 1 through 35 of this Complaint.

37. Plaintiffs are informed and believe and thereon allege that during the manufacturing process of the nuclear fuel rods by Defendant Sylvania at the Hicksville property, industrial solvents and radioactive substances were discharged into the ground on the site. This discharge of chemical and radioactive substances created a hidden, dangerous condition on the property.

38. Plaintiffs are informed and believe and thereon allege that beginning in or about 1966, Defendant GTE owned and operated the Hicksville property and leased it to other companies, including Magazine Distributors, the employer of Plaintiffs Gerard DePascale and Liam Neville.

39. Plaintiffs are informed and believe and thereon allege that, as a result of a merger in or about 2000 between Defendant GTE and Defendant Verizon, the Hicksville property is now owned by Defendant Verizon. Defendant Verizon leased the Hicksville property to other companies, including Magazine Distributors.

40. Plaintiffs are informed and believe and thereon allege that Defendants GTE and Verizon knew or should have known about Defendant Sylvania's use of toxic and radioactive materials at the Hicksville property. Defendants GTE and Verizon knew or should have known that, as a result of Defendant Sylvania's activities on the property, industrial solvents and radioactive substances were discharged into the ground at the Hicksville property.

41. Plaintiffs are informed and believe and thereon allege that sometime prior to 1991 and continuing until in or about June, 2003, Magazine Distributors leased and operated a warehouse at the Hicksville property. The employment of Plaintiffs Gerard DePascale and Liam Neville with Magazine Distributors required that they work at the Hicksville property almost daily. As a result, Plaintiffs Gerard DePascale and Liam Neville were continually exposed, during the regular course of their work, to the industrial solvents and radioactive substances contaminating the Hicksville property.

42. Plaintiffs are informed and believe and thereon allege that, despite knowing of the existence of chemical and radioactive contamination at the Hicksville property, Defendants GTE and Verizon failed to take any action to remediate the contamination or warn or prevent Plaintiffs Gerard DePascale and Liam Neville, among others, from being exposed to it.

43. Plaintiffs are informed and believe and thereon allege that as a result of the dangerous conditions created by the contamination the Hicksville property by the radioactive substances and toxic chemicals, Plaintiffs Gerard DePascale and Liam Neville have sustained severe injury in amount subject to proof at trial. Plaintiffs ask leave of the Court to amend this Complaint to set forth the exact amount of damages when they have been ascertained or proven.

THIRD CAUSE OF ACTION: SUCCESSOR LIABILITY AGAINST DEFENDANTS GTE, VERIZON AND DOES 1 TO 1,000

44. Plaintiffs reallege and incorporate by reference Paragraphs 1 through 43 of this Complaint.

45. Plaintiffs are informed and believe and thereon allege that, in or about 1966, Defendant GTE acquired the Hicksville property from Defendant Sylvania and agreed, at the time of purchase, to assume all of Defendant Sylvania's known and unknown liabilities for the property.

46. Plaintiffs are informed and believe and thereon allege that, as a result of a merger in or about 2000 between Defendant GTE and Defendant Verizon, the Hicksville property is now owned by Defendant Verizon. As a direct, actual and legal consequence of the merger, Defendant Verizon agreed to assume all of GTE's known and unknown liabilities.

47. Plaintiffs are informed and believe and thereon allege that Defendant GTE or Defendant Verizon is or are liable for the damages Plaintiffs have sustained and will continue to sustain in amount subject to proof at trial. Plaintiffs ask leave of the Court to amend this Complaint to set forth the exact amount of damages when they have been ascertained or proven.

FOURTH CAUSE OF ACTION: NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS AGAINST DEFENDANTS GTE, VERIZON AND DOES 1 TO 1,000

48. Plaintiffs reallege and incorporate by reference Paragraphs 1 through 47 of this Complaint.

49. Plaintiffs are informed and believe and thereon allege that during the manufacturing process of the nuclear fuel rods by Defendant Sylvania at the

Hicksville property, industrial solvents and radioactive substances were discharged into the ground on the site. This discharge of chemical and radioactive substances created a hidden, dangerous condition on the property.

50. Plaintiffs are informed and believe and thereon allege that beginning in or about 1966, Defendant GTE owned and operated the Hicksville property and leased it to other companies, including Magazine Distributors, the employer of Plaintiffs Gerard DePascale and Liam Neville.

51. Plaintiffs are informed and believe and thereon allege that, as a result of a merger in or about 2000 between Defendant GTE and Defendant Verizon, the Hicksville property is now owned by Defendant Verizon. Defendant Verizon leased the Hicksville property to other companies, including Magazine Distributors.

52. Plaintiffs are informed and believe and thereon allege that Defendants GTE and Verizon knew or should have known about the production of radioactive substances and the use of industrial solvents by Defendant Sylvania at the Hicksville property, and that these radioactive and toxic substances were discharged into the ground at the Hicksville property.

53. Plaintiffs are informed and believe and thereon allege that sometime prior to 1991 and continuing until June 2003, Magazine Distributors leased and operated a warehouse at the Hicksville property. The employment of Plaintiffs Gerard DePascale and Liam Neville with Magazine Distributors required that they work at the Hicksville property almost daily. As a result, Plaintiffs Gerard DePascale and Liam Neville were continually exposed, during the regular course of their work, to the industrial solvents and radioactive substances contaminating the property.

54. Plaintiffs are informed and believe and thereon allege that, despite knowing of the existence of chemical and radioactive contamination at the Hicksville property, Defendants GTE and Verizon, and failed to take any action to remediate the contamination or warn or prevent Plaintiffs Gerard DePascale and Liam Neville, among others, from being exposed to the industrial solvents and radioactive substances at the site. Plaintiffs Gerard DePascale and Liam Neville were exposed over the course of several years to known carcinogens because Defendants GTE and Verizon were negligent.

55. As a proximate cause of Defendants' acts, Plaintiffs Gerard DePascale and Liam Neville have suffered and will continue to suffer severe emotional distress in addition to their physical injuries. Plaintiff Gerard DePascale, already afflicted with a rare form of cancer, fears further complications and growths of different types of cancer. Plaintiff Liam Neville fears cancer as a result of his lengthy exposure to carcinogens, which caused physical damage, manifested in the form of membranous nephropathy.

FIFTH CAUSE OF ACTION: LOSS OF CONSORTIUM AGAINST DEFENDANTS GTE, VERIZON AND DOES 1 TO 1,000

56. Plaintiffs reallege and incorporate by reference Paragraphs 1 through 55 of this Complaint.

57. Plaintiffs Gerard DePascale and Joanne DePascale are married and cohabit together as husband and wife.

58. As a result of the foregoing serious injury and health consequences caused by the Defendants, Plaintiff Joanne DePascale was deprived of the care, comfort, consortium and services of her husband, Plaintiff Gerard DePascale, all to her damage.

SIXTH CAUSE OF ACTION: PUNITIVE DAMAGES AGAINST DEFENDANTS GTE, VERIZON AND DOES 1 TO 1,000

59. Plaintiffs reallege and incorporate by reference Paragraphs 1 through 57 of this Complaint.

60. The Defendants actions were taken with wanton and reckless disregard of the Plaintiffs rights.

61. By reason of the above, the Defendants should be made to pay the Plaintiff punitive damages, in addition to the compensatory damages demanded.

The amount of damages sought in this action exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

WHEREFORE, Plaintiffs demand judgment against defendants in an amount to be determined upon the trial of this action:

1. General Damages;
2. Punitive Damages;
3. All medical, hospital, and incidental expenses, past, present, and future, according to proof;
4. All loss of earnings, past and future;
5. Interest from the date of breach at the rate of nine percent per annum;
6. Costs of the suit incurred herein;
7. Attorneys' fees, and
8. Other and future relief as this Court may deem just and proper.

DATED: July 24, 2007

THE MARASCO LAW FIRM

By: ______________________

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